

(2003) 03 GUJ CK 0065

In the Gujarat High Court

Case No : Special Civil Application No. 2846 of 2002

Gujarat State Road Transport Corporation

APPELLANT

Vs

Bajitkhan Sherkhan Sipahi

RESPONDENT

Date of Decision : 12-03-2003

Acts Referred:

Citation : (2003) 03 GUJ CK 0065

Hon'ble Judges : R.R. Tripathi, J

Bench : Single Bench

Advocate : Nagesh C. Sood, for the Appellant; G.K. Rathod, for the Respondent

Final Decision : Allowed

Judgement

Ravi R. Tripathi, J.—On 25th February, 2002, Rule was issued and ad-interim relief in terms of paragraph-6(B) was granted. On 29th January, 2003, Office was directed to list the matter on a separate Board for final hearing on 5th February, 2003.

Today, the matter is listed in the Final Hearing Fixed Matter Board. When the matter is called out, learned Advocate for the respondent, Mr.G.K.Rathod, is not present before the Court.

2. The present petition is filed by the Gujarat State Road Transport Corporation (hereinafter referred to as "the Corporation" for short) challenging the judgement and award dated 16th April, 2001 passed by the learned Judge of the Labour Court, Kalol in Reference (LCK) No.237 of 1997.

3. The case of the petitioner-Corporation is that the respondent-workman, while serving with the petitioner-Corporation as a Driver at Kheralu Depot of Mehsana Division, having Badge No.643, was served with a Chargesheet bearing No.140/1989 dated 1st May, 1989. The charge against the respondent-workman was that he, by submitting a false School Leaving Certificate, cheated the Corporation and got himself recruited as `driver". A departmental inquiry was

initiated, in which the respondent-workman was not held guilty and the chargesheet was `filed" (closed) by an order dated 6th March, 1990.

3.1 Thereafter, the Reviewing Authority, Divisional Controller, Kheralu, issued show cause notice dated 07/07/1994 for review, to which the respondent-workman filed his reply dated 13th July, 1990. It was contended by the respondent-workman before the learned Judge of the Labour Court that the petitioner-Corporation, without taking into consideration the contents of the reply, without giving any opportunity of hearing and without any lawful reason, dismissed the respondent-workman by order dated 27th June, 1995. The respondent-workman produced a xerox copy of the School Leaving Certificate to show that he had studied in the school concerned, and, he examined one Shri Mohanbhai, the Head Teacher of Savaipura at Kheralu. The respondent-workman submitted that the matter was investigated by the Security Officer with vengeance and therefore, it should be held that the charges against the respondent-workman are not proved and, therefore, the order of dismissal is required to be quashed.

3.2 The petitioner-Corporation filed its reply vide Exh.50 denying the contents of the statement of claim. The Corporation submitted that at the time of appointment of the respondent-workman as a driver, under the Recruitment Rules, the respondent-workman had submitted his School Leaving Certificate, about which it was noticed subsequently that the certificate produced by the respondent-workman was a xerox copy and not a genuine one, but, a forged one, and, therefore, he was served with the show cause notice and the chargesheet. In the departmental proceedings, on the basis of the evidence produced, it was held that the charge was not proved and, therefore, the chargesheet was filed (closed). It is further stated by the petitioner-Corporation in its reply that having felt that the evidence produced in the departmental proceedings was not sufficient, the Reviewing Authority decided to further inquire into the matter. The inquiry was caused at the school and on the basis of the deposition of the teacher, it was found that the respondent-workman had not studied in the school concerned and that the School Leaving Certificate is a forged one. On having found the charge proved, the respondent-workman was dismissed from service by the order dated 27th June, 1995.

4. The learned Judge, after having considered the rival contentions, was pleased to quash the order of dismissal and order reinstatement of the respondent-workman on his original post with continuity of service without back-wages, which is under challenge in this petition.

5. The learned Judge ought to have taken into consideration that the respondent-workman had accepted the legality and validity of the departmental proceedings and also the inquiry made by the Reviewing Authority, and, therefore, there was no reason to go into the aspect of the validity of the same. The learned Judge ought to have confined himself to the aspect of the quantum of punishment, as was rightly observed by him in paragraph-6 of the judgement and award.

6. The learned Judge, while discussing the facts of the case in paragraph-7, has recorded that in the departmental inquiry, the charges levelled against the respondent-workman were not proved, but then, the Reviewing Authority decided to take the case in review, in which a Notice was given to the respondent-workman and before the Reviewing Authority, the Corporation examined Shri Mohanbhai Gulabdas Shrimali, Head Teacher of Savaipura School, Taluka-Danta, District-Banaskantha, who deposed before the Reviewing Authority to the effect that,

"Today, I am shown the proceedings, which took place at Kheralu Depot on 28th September, 1989. On that day, I was present in my school and I have not participated in any such proceedings. The record to the effect that on 28th September, 1989, I had remained present for personal hearing and I had put signature is not correct. I have not signed any such document. Some other person in my name has signed. I have never participated in such proceedings. I was present in the school. The signatures on page nos.53 and 54 of the proceedings (inquiry) in English as 'M.G.Shrimali' are not made by me. I normally sign in Gujarati."

The learned Judge has discarded the aforesaid deposition of the witness by stating that the respondent-workman was not given an opportunity to cross examine the aforesaid witness; that the petitioner-Corporation has not proved that the signature in the departmental proceedings dated 28th September, 1989 were not that of the witness by calling the witness in the Court; that only a statement is relied upon; and, the petitioner ought to have kept the said Shri Mohanbhai Gulabdas Shrimali present in the Court. The petitioner-Corporation ought to have caused cross-examination of the person, who had come as a witness in the guise of Mohanbhai Gulabdas Shrimali on 28th September, 1989 at extenso and ought to have asked for necessary proof of his working in the school. Besides, the learned Judge also considered that in addition to the said witness, Shri Gulabdas Mohanbhai Shrimali, the respondent-workman had examined two to three witnesses and all those witnesses had stated that the respondent-workman had studied in Savaipura Primary School; and, that one teacher, Savajibhai, who was serving at the relevant time, was of unsound mind and that teacher had committed suicide in Balaram Forest and because of his negligence, names of ten students were left out from being recorded in the muster. In view of these facts, the learned Judge generously concluded that the respondent-workman had not committed any cheating with the petitioner-Corporation.

7. On the face of it, the learned Judge has stretched the matter far from the permissible limits. He has erred in concluding, without there being any cogent reason for the same, that the respondent-workman had not cheated the petitioner-Corporation. The falling standards of morality and honesty are a matter of concern for every one, but then, there has to be a limit. The respondent-workman produces a xerox copy of the school leaving certificate,

which is detected to be forged one, departmental inquiry is initiated, in which he gets a person examined purporting to be Shri Mohanbhai Gulabdas Shrimali, who is also detected at a later point of time when the matter is further investigated. Still the learned Judge relied upon the evidence of other witnesses of the respondent-workman, who came up with a new fantasy that at the relevant time, there was a teacher named Savajibhai of unsound mind and on account of his negligence, names of ten students could not be recorded in the muster. The learned Judge took a charitable view of the matter and gave the benefit of the said non-recording of the names to the present respondent-workman. Prima facie, it appears that the learned Judge, without any application of mind, was bent upon to record a finding in favour of the respondent-workman. If at all, the respondent-workman wanted to cross examine the said Mohanbhai Gulabdas Shrimali, he could have made a request to that effect and the learned Judge should have granted the same and despite that, if the witness was not examined, the learned Judge could have drawn an adverse inference. In the present case, without undertaking any such exercise, the learned Judge relying on the witnesses of the respondent-workman, who have audacity to depose all types of fantasies which are believed by the learned Judge, which is neither tenable nor sustainable in law.

8. The petition is tried to be defended by filing an affidavit-in-reply, which does not have any substance. The authorities cited in the affidavit-in-reply has no application to the facts of the present case and, therefore, the same does not change the conclusions reached by this Court.

9. In view of the foregoing discussion, the present petition is allowed. The judgement and award dated 16th April, 2001 passed by the learned Judge of the Labour Court, Kalol in Reference (LCK) No.237 of 1997 is hereby quashed and set aside. Rule is made absolute. No order as to costs.